

GENERAL ORDER

FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: INVESTIGATIVE HYPNOSIS PROCEDURES	NUMBER:	440.5
CANCELS ORDER DATED: 7-1-08	DATE:	4-1-12

I. PURPOSE

The purpose of this General Order is to establish guidelines and procedures for the Police Department to follow for the intention of using hypnosis as an investigative tool, and to set forth departmental policy with regard to using hypnosis.

II. POLICY

- A. Hypnosis is being used by many large police departments in the United States in the investigative and preparatory phases of criminal cases. Hypnosis is legally permissible when used as an investigative aid for lead purposes in cases where witnesses or victims are willing to undergo such an interview.
- B. Although the Virginia Supreme Court has expressly held that hypnotic evidence, whether in the form of the subject testifying in court under hypnosis or through another's revelation of what the subject said while under hypnosis, is not admissible, that court has not prohibited the use of hypnosis as a means of refreshing or restoring the recollection of a witness who is expected to testify subsequently at trial. Since the use of hypnosis is certain to be challenged by defense attorneys, and is a sensitive issue, the following guidelines must be observed by the Department when considering its utilization.
- C. Hypnosis is only to be used in the following circumstances:
 - 1. A victim/witness has sustained a physical injury and has little or no recall.
 - 2. A victim/witness has suffered an emotional shock and has either consciously or subconsciously repressed this event.
 - 3. A victim/witness observed a split second event and believes that he really saw nothing.
 - 4. A victim/witness was under the influence of drugs and/or alcohol at the time of the event and has little or no recall.

GENERAL ORDER

FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: INVESTIGATIVE HYPNOSIS PROCEDURES	NUMBER:	440.5
CANCELS ORDER DATED: 7-1-08	DATE:	4-1-12

5. A victim/witness cannot recall past events due to the passage of time.
 6. It may be necessary, in extremely unusual circumstances, for an officer to be hypnotized to recall certain facts which the officer obtained in the course of an investigation.
 7. Hypnosis shall only be performed on victims/witnesses of the following crimes: homicide/manslaughter, rape, serious robberies, other sex offenses, extortion, kidnapping, and certain malicious woundings. Only in extremely exceptional cases other than the ones mentioned above may hypnosis be used.
- D. Given the lack of assurance that the Virginia Supreme Court will rule favorably on the issue of the admissibility of the testimony of a witness whose memory has been refreshed or restored by hypnosis, the Department should use hypnosis only as a last resort when more traditional methods of refreshing recollection have failed.
- E. In any case involving hypnosis of a victim/witness, every effort must be made to locate substantiating evidence or other witnesses to corroborate the portion of the witness' testimony which was elicited during or following hypnosis. Since the use of the information obtained through hypnosis cannot be assumed to be necessarily accurate, careful investigation is needed to verify the accuracy of information obtained during these sessions.
- F. Hypnosis should only be performed by a certified hypnotist at the written request of the subject. Hypnosis may be performed only by a licensed physician, a licensed clinical psychologist or a dentist when used by the Department.
- G. In the event that the testimony of a subject who has been hypnotized is admissible in court, the person performing the hypnosis for the Department must be available to testify at trial about the hypnosis procedure.
- H. A record of the interview of the hypnosis session must be made in all cases and preserved as potential evidence to be introduced at trial. A video recording (with an audio recorded backup) should be made of the entire

GENERAL ORDER

FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: INVESTIGATIVE HYPNOSIS PROCEDURES	NUMBER:	440.5
CANCELS ORDER DATED: 7-1-08	DATE:	4-1-12

session. The audio/video recording should be kept strictly confidential and made available only to those persons actively engaged in the investigation. A video technician from within the Department may be utilized to assist in the video recording. The investigating officer has sole responsibility for the recording once it is completed. Access to the recording must be made through and in the presence of the detective. Unless necessary for use in court at a later date, three (3) years is recommended as a minimum time to maintain recorded hypnotic sessions.

- I. In order to evaluate the effectiveness of the hypnosis technique, a written summary describing in detail the results of the session shall be forwarded and maintained by the commander of the Criminal Investigations Bureau (CIB). The summary shall identify any significant investigative information obtained through the use of this technique and indicate any unusual circumstances that occurred.

III. REGULATIONS

- A. The initial determination to consider the use of hypnosis rests with the investigating officer of a case and the investigating officer's immediate supervisor. This determination should be made in light of the information outlined above and with reasonable expectations that hypnosis may provide valuable information for investigative purposes.
- B. Final authorization to pursue the use of hypnosis must be obtained from the commander of CIB. Upon the CIB commander's approval, the Chief of Police and the Office of the Commonwealth's Attorney must be informed that hypnosis is to be used.
- C. A Hypnosis Submission Release Form is to be completed by the investigating officer in any instance in which hypnosis is used by the Department. The release form consists of four (4) separate sections each required to be signed by the subject desiring to be hypnotized. The investigating officer and a witness (preferably the CIB commander) must also sign the form. The release form indicates that the subject understands that the hypnosis session is purely voluntary and being used for the purpose of assisting the police authorities in their investigation. It also indicates the hypnotist who will conduct the hypnosis and the date of the

GENERAL ORDER

FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: INVESTIGATIVE HYPNOSIS PROCEDURES	NUMBER: 440.5
CANCELS ORDER DATED: 7-1-08	DATE: 4-1-12

session. The form also indicates the subject's agreement to have the session recorded. Similarly, the form attests to the subject's knowledge that he is in good physical and mental health. Finally, the last section of the form releases all Fairfax County employees and their agents from any and all liability which might arise in connection with the hypnosis. The purpose of requiring a signature of the subject under each section is to guarantee that the entire form has been understood. The completed form shall become part of the case record. The original shall be included in the case record and a copy shall be maintained by the investigating officer.

- D. When a case has been approved for hypnosis, the investigating officer is responsible for contacting the hypnotist to arrange a convenient time for all involved to meet. It shall be the responsibility of the investigating officer to see that the subject has a means of getting to the session and coordinating the recording of the session.
- E. In the case that a subject is known to be under a doctor's care for any reason, hypnosis may only be performed after the subject's doctor has given written permission to perform hypnosis. Hypnosis for known or suspected habitual drug users (especially hallucinogens) should be considered with extreme caution and only after close consultation between the hypnotist and the subject's physician. Follow-up as to the status of the subject, following the sessions, should be instituted on a regular basis.

IV. RESTRICTIONS

- A. HYPNOSIS SHALL NOT BE PERFORMED ON A SUSPECT, POTENTIAL SUSPECT, OR A DEFENDANT WITHOUT THE CONCURRENCE OF THE COMMONWEALTH'S ATTORNEY. The Office of the Commonwealth's Attorney shall be the final authority if there is any doubt on the permissibility of using hypnosis and the admissibility of information gained through its use.
- B. Hypnosis should never be performed by an employee of the Department in connection with the investigation of criminal activity.

GENERAL ORDER
FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: INVESTIGATIVE HYPNOSIS PROCEDURES	NUMBER:	440.5
CANCELS ORDER DATED: 7-1-08	DATE:	4-1-12

V. ACCREDITATION STANDARDS REFERENCE

VLEPSC
OPR.
02.03


This General Order becomes effective April 1, 2012 and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:



Chief of Police

APPROVED BY:



County Executive